

the thermoplastic polyolefin adhesive disclosed by Fink. Motivation to do so would be the explicitly teaching by Jialanella that said adhesive is suitable for carpet backings

Office Action of November 30, 2000, page 4-5.

Applicants have reviewed the above references and respectfully disagree that the above references render the claimed invention obvious. Applicants' reasons are stated as follows

A. Applicable Law.

To reject claims of an application under 35 U.S.C. § 103(a), an examiner has the burden of establishing an unrebutted *prima facie* case of obviousness. See *In re Deuel*, 51 F.3d 1552, 1557, 34 U.S.P.Q.2d 1210, 1214 (Fed. Cir. 1995). In the absence of a proper *prima facie* case of obviousness, an applicant who complies with the other statutory requirements is entitled to a patent. See *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992). One important indication of non-obviousness is the "teaching away" from the claimed invention by the prior art or by experts in the art at or after the time the invention was made. See *U.S. v. Adams*, 383 U.S. 39 (1966).

Teaching away is the antithesis of the art's suggesting that the person of ordinary skill go in the claimed direction. Teaching away from the art is a *per se* demonstration of lack of *prima facie* obviousness. See *In re Dow Chemical Co.*, 837 F.2d 469, 5 USPQ2d 1529 (Fed. Cir. 1988), *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988), *In re Nielson*, 816 F.2d 1567, 2 USPQ2d 1525 (Fed. Cir. 1987).

B. Application of the Law.

1. CLAIMS 1-6 AND 9-12 ARE NOT RENDERED OBVIOUS BY *FINK* AND *JIALANELLA* BECAUSE *FINK* TEACHES AWAY FROM USING POLYETHYLENE AS AN ADHESIVE BACKING.

Claims 1-6 and 9-12 are directed to a carpet including (a) a primary backing, (b) a plurality of fibers attached to the primary backing, (c) an adhesive backing, (d) an optional secondary backing adjacent to the adhesive backing, wherein the adhesive backing is comprised of at least one homogeneously branched ethylene polymer characterized as having a short chain

branching index (SCBDI) of greater than or equal to 50% and is in intimate contact with the primary backing and has substantially penetrated and substantially consolidated fibers.

Fink discloses a carpet including a primary backing having tufts of synthetic carpet fibers protruding from a top surface and optionally, a secondary backing with an extruded sheet of an isotactic polyolefin polymer between and integrally fused to a bottom surface of the primary backing and an upper surface of the secondary backing. It provides a list of compositions that may or may not be suitable for use in the extruded sheet. See *Fink*, Table A, page 20. One of the properties listed is the expected bonding strength with polypropylene. Four groups of materials were investigated: polypropylene, polyethylene, polybutylene, and elastomeric alloy TPE's. All polyethylene examples have poor bond strength, except for polyethylene ionomer. According to *Fink*, polyethylene (other than its ionomers) is not suitable for adhesively bonding tufted carpet to the primary backing. Given the uniform unacceptability of polyethylene polymers in *Fink*'s disclosure, one of ordinary skill in the art would not experiment with additional polyethylene polymers for use in extrusion backed carpet applications. Therefore, *Fink* does not teach or suggest the use of a homogeneously branched ethylene polymer as the extruded sheet, but actually teaches away from using homogeneously branched ethylene polymers as the extruded sheet. Because *Fink* teaches away from using ethylene polymers, it cannot be properly combined with *Jialanella*.

As such, no *prima facie* case of obviousness has been established. As mentioned above, in the absence of a *prima facie* case of obviousness, an applicant who complies with other statutory requirements is entitled to a patent. The Applicants respectfully submit that the claimed invention is non-obvious and thus patentable.

CONCLUSION

The Applicants have addressed all of the Examiner's rejections and believe that the claims are now in condition for allowance and respectfully request that the Examiner grant such an action. If any questions or issues remain in the resolution of which the Examiner feels will be advanced by a conference with the Applicants' attorney, the Examiner is invited to contact the attorney at the

number noted below

No fee is believed to be required for this submission. Should there be any additional fees required, please charge such additional fees to Deposit Account 10-0447, reference 43225.41824BUSP(BAI).

Respectfully submitted,

JENKENS & GILCHRIST
A Professional Corporation



J. Benjamin Bai, Ph.D.

Reg. No. 43,481

Date: 11/20/2001
Jenkins & Gilchrist,
A Professional Corporation
1100 Louisiana St., Ste. 1800
Houston, Texas 77002
Telephone: (713) 951-3387
Fax: (713) 951-3314